

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	NO. 61477-1-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
EMANUEL NATHANIEL PELLE,	)	Unpublished Opinion
	)	
Appellant.	)	FILED: July 27, 2009
	)	

Lau, J. — Emanuel Pelle challenges his conviction for first degree burglary while armed with a deadly weapon. He contends there is insufficient evidence to show that the hatchet he was carrying constituted a deadly weapon. Because the evidence is sufficient to show that Pelle used the hatchet in a manner in which it was readily capable of causing death or substantial bodily harm, we affirm.

**FACTS**

The State charged Pelle with first degree burglary and first degree arson based on an incident at the Harborview Tower Apartments in Seattle. Pelle was a tenant

there in 2003, but fell behind in his rent payments beginning in September. Leona Leland, the building manager, instituted eviction proceedings against Pelle. On December 8, 2003, Detective Bradley Ray of the King County Sheriff's Office executed the eviction order. Leland changed the locks to the lobby and Pelle's apartment.

Later the same day, Leland observed—via a security camera—that Pelle was attempting to return to his former apartment. She saw Pelle use a hatchet to break the glass door in the lobby and enter the building. He appeared angry and agitated. She immediately called the police.

The security camera video showed Pelle briefly exit the building to retrieve a small backpack and then reenter the building still holding the hatchet. He then left the lobby for a few minutes and returned with only the hatchet. At that point, Seattle Police Officers Dick Scott and Sam Byrd arrived. They drew their weapons and ordered Pelle to drop the hatchet. In response, Pelle moved toward the officers and told them to drop their guns. He said his problem was with the sheriff, not them. The officers repeatedly ordered Pelle to drop the hatchet, but he refused to comply.

Officer Byrd testified that Pelle was holding the hatchet by the handle, near the blade. He described that the hatchet was at Pelle's waist level, but that its position varied as he walked and swung his arm. According to Officer Byrd, "[Pelle] was sweating and appeared extremely agitated and yelling at us." Report of Proceedings (RP) (Feb. 5, 2008) at 62. Officer Scott agreed that Pelle was angry and upset. He testified that Pelle held the hatchet by the end of its handle, but that he did not raise, swing, or attempt to throw it at them. Officer Scott remembered Pelle being 30 feet

away, while Officer Byrd testified that he was 15 feet from them.

Pelle ran up to the third floor and into his former apartment. The officers ordered him to come out, but he refused. Officer Scott testified that Pelle said “something to the effect he was ready for us if we came in.” RP (Feb. 11, 2008) at 35. After 20 to 30 minutes, Officer Scott noticed a small flame coming from underneath the door. Soon after, Pelle jumped from the apartment window and the officers extinguished the fire.

After a bench trial, the court found Pelle guilty of the burglary charge, but not guilty of the arson charge. The court’s written findings of fact included the following:

L. The defendant swung the axe handle up toward the officers then retreated into a stairwell and hid behind a door that he left partially open. The defendant was agitated and combative and was using the axe in an aggressive—or at least defensive—fashion toward the officers. The defendant was within 15 to 30 feet of the officers during the confrontation, which was well within striking distance. Further, the defendant returned to the lobby with the axe and not his backpack, which is further evidence of his intention to use the axe either as an implement to defend himself against a perceived threat, or as an offensive weapon.

M. If the defendant had thrown the hatchet at the officers from the distance described above, he could have struck the[m] and inflicted substantial bodily harm or death. The way in which he . . . brandished and wielded the axe against the officers—despite his lack of specific verbal threats—indicates the defendant had armed himself with a weapon readily capable of causing substantial bodily harm or death.

The court sentenced Pelle to credit for time served, which was 32 months. Pelle appeals.

### ANALYSIS

Pelle contends that the court erred in finding him guilty of first degree burglary because the hatchet did not constitute a deadly weapon.<sup>1</sup> He argues the court’s finding

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<sup>1</sup> “A person is guilty of burglary in the first degree if, with intent to commit a crime

that he swung and wielded the axe against the officers is not supported by substantial evidence. He emphasizes Officer Scott's testimony that he did not raise, swing, or attempt to throw the hatchet at them. He contends the evidence shows he used the hatchet only as a tool to enter his former apartment.

Evidence is sufficient to support a conviction if it could permit any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). We review challenges to the sufficiency of the evidence presented at a bench trial by determining whether substantial evidence supports the challenged findings and whether those findings support the court's conclusions of law. State v. Madarash, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). We consider the evidence in the light most favorable to the State. State v. Rempel, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990). Credibility determinations are reserved to the trial court, and we will not overturn them on appeal. Madarash, 116 Wn. App. at 509. Circumstantial evidence is no less reliable than direct evidence. State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). And a defendant's claim of insufficiency "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

RCW 9A.04.110(6) defines the term "deadly weapon."

"Deadly weapon" means any explosive or loaded or unloaded firearm, and shall against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person." RCW 9A.52.020(1).

include any other weapon, device, instrument, article, or substance, including a “vehicle” as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

Because a hatchet is not an explosive or firearm, it is not a deadly weapon per se under the statute. State v. Gotcher, 52 Wn. App. 350, 353–54, 759 P.2d 1216 (1988). Therefore, to qualify as a deadly weapon, it must be readily capable of causing death or substantial bodily harm under the circumstances in which it is used, attempted to be used, or threatened to be used.

The following facts are supported by the testimony of Leland and Officers Byrd and Scott. After dropping off his backpack, Pelle returned to the lobby with only the hatchet. He moved toward the officers despite the fact that they had drawn their weapons. He refused their orders to drop the hatchet, and he told them to drop their guns. Pelle was angry and yelling at the officers. While he did not raise the hatchet or attempt to throw it at the officers, Pelle was swinging his arm—and the hatchet—as he walked. He was less than 30 feet from the officers during the confrontation in the lobby. After retreating to his apartment, there was a standoff for 20 to 30 minutes, and Pelle said “something to the effect he was ready for [the officers] if [they] came in.” RP (Feb. 11, 2008) at 35.

A rational trier of fact could infer from this evidence that Pelle used the hatchet not simply to break into his former apartment, but also to keep the officers at bay, implicitly threatening them with violence if they sought to restrain him. And viewing the evidence in the light most favorable to the State, we conclude that it supports the

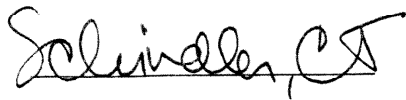
court's factual finding that Pelle swung and wielded the hatchet against the officers.

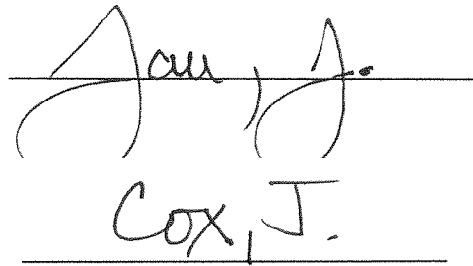
Further, the court's findings support its conclusion that Pelle was armed with a deadly weapon

because the manner in which he used the hatchet could readily have caused substantial bodily harm or death.

Affirmed.

WE CONCUR:

  
Schindler, CT

  
Cox, J.